

COUNTY OF YORK, VIRGINIA
REQUEST FOR PROPOSALS
(RFP)

Issue Date: February 11, 2005

RFP #: 1443

Title: Engineering Design: Harwoods Mill Athletic Field Complex

Classification Code: 92500

Issuing Agency:

County of York, Virginia

Central Purchasing

120 Alexander Hamilton Blvd

P.O. Box 532

Yorktown, Virginia 23690-0532

Using Agency And/Or Location

Where Work Will Be Performed:

Department of General Services

102 County Drive

Yorktown, Virginia 23692

Sealed Proposals Will Be Received Until 5:00 p.m. on March 9, 2005

At Which Time They Shall Be Opened In Public.

NOTE: Five copies of your Proposal will be required.

All Inquiries For Information Should Be Directed To: T. W. Sawyer, CPPO, Purchasing Agent,
Telephone: (757) 890-3680.

SEND PROPOSALS DIRECTLY TO THE ISSUING AGENCY SHOWN ABOVE.

In Compliance With This Request For Proposal, The Undersigned Offers To Provide The Requested Service(s) Shown in the Attached/Enclosed (A signed Letter of Transmittal may be substituted for this cover page).

Name and Address of Firm:

Date: _____

By: _____

Signature in ink

Title

Zip Code

Telephone No.: (_____) _____

Federal Tax ID# _____

1.0 PURPOSE:

It is the express purpose of this formal Request for Proposals (RFP) to acquire professional and comprehensive engineering and design services for the County of York, Virginia (hereinafter "Owner") to design and prepare construction contract documents, and perform contract administration services for the construction of the proposed Harwoods Mill Athletic Field Complex.

1.1 DESCRIPTION OF THE NEW HARWOODS MILL ATHLETIC FIELD COMPLEX:

The project site is within an area of approximately one hundred eighty seven (187) acres, owned by the City of Newport News, Virginia, and on property in York County, located at 3629 George Washington Memorial Highway (Route 17), Yorktown, Virginia, and northeast of the Harwoods Mill Reservoir (see Proposed Harwoods Mill Athletic Field Complex maps included as part of this RFP).

The design and construction of Harwoods Mill Athletic Field Complex proposed for the site shall include the following:

1. Three (3) lighted instructional soccer fields, with field dimensions of 120' X 180'
2. Five (5) lighted regulation soccer/football fields, with field dimensions of 180' X 360'
3. Five (5) lighted youth baseball / softball fields, with 60' base paths / 200' minimum down sidelines and from home plate to center field
4. Four (4) lighted adult softball fields, with 65' base paths / 325' down sidelines and to center field
5. Support facilities, which may include, but not be limited to, electrical service, water and sewer service, vehicular access, parking, signage, restrooms, maintenance and storage buildings, concession buildings, and storm drainage system with regional BMP.

Work shall also include identification of areas available for playground equipment, picnic shelters and natural surfaced trails.

1.2 RESOURCES AVAILABLE FOR THE PROJECT:

The following two (2) documents are available and included with this RFP, and may be found on the County's Internet File Transfer Protocol (FTP) site as Adobe PDF files:

1. A copy of a planimetric map, titled "Proposed Harwoods Mill Athletic Field Complex", showing the leased land areas available for the project construction, and a wetlands delineation of the areas, approved by the US Army Corps of Engineers (USACOE).

ftp://ftp.yorkcounty.gov/purchasing/RFP1443_Harwoods_Mill_Attachment_A.pdf

2. A copy of an aerial view map of the same area described above, also titled "Proposed Harwoods Mill Athletic Field Complex", and also with the wetlands delineation included.

ftp://ftp.yorkcounty.gov/purchasing/RFP1443_Harwoods_Mill_Attachment_B.pdf

If you are unfamiliar with, or unable to use, File Transfer Protocol (FTP) on the internet; please call Central Purchasing, 757-890-3680, for assistance.

1.3 ESTIMATED SCHEDULE FOR ENGINEERING SERVICES:

Award of the Engineering Services Agreement, for the Harwoods Mill Athletic Field Complex project, is anticipated for June 3, 2005. All engineering design for the project, and award of the project construction contract, are anticipated to be complete to allow for start of construction on July 17, 2006.

2.0 SCOPE OF THE SERVICES REQUIRED:

A full range of professional engineering design services is needed to support the design and construction of the County's Harwoods Mill Athletic Field Complex Project. Owner will execute a separate notice to proceed to the Engineering Services Agreement for each specific phase requested. Work may include, but will not be limited to: engineering studies to define the magnitude and scope of the work; survey and geo-technical work; flow monitoring and modeling; existing utility location and coordination; development of economic evaluations; performance of environmental reviews, assessments and delineations; preliminary design; design analyses; obtaining of permits from regulatory agencies; equipment and materials selection; final design services; cost estimates; preparation of full contract drawings and specifications; preparation of easement plats; reproduction services; preparation of bid documents; construction bidding; shop drawings and submittal review; and project management. The firm shall also attend all applicable associated project meetings, to include public meetings.

The basic engineering/design services for construction of the Harwoods Mill Athletic Field Complex consist of the following five phases: Preliminary Evaluation Phase, Design Development Phase, Construction Documents Phase, Bidding Phase, and Construction Contract Administration Phase. They are discussed more fully in the Sample Engineering Services Agreement attached hereto. Each phase in support of the project may include, but not necessarily be limited to, the following:

1. Engineering services associated with the design and construction of the proposed athletic fields, their support buildings, field lighting, parking and access roads.
2. Engineering services associated with the addition of, and/or modification to existing, sanitary sewer systems and associated collection systems and pumping facilities.
3. Engineering services associated with the extension of, and/or modification to existing, public water systems.

4. Engineering services associated with drainage studies and storm water management designs.
5. Engineering services associated with environmental reviews, assessments and delineations.
6. Engineering services associated with horizontal directional drilling requirements for sanitary sewer lines, force mains and water lines.
7. Engineering services, including necessary traffic engineering analyses associated with street, roadway, asphalt pavement and parking lot design, and the design of miscellaneous structures.
8. Construction administration and inspection services that may include bid review, shop drawing review, site inspections, "as built" drawing review and holding of on-site meetings with the construction contractor.

3.0 GENERAL TERMS AND CONDITIONS:

3.1 FORM:

Responses to this Request for Proposal (RFP) may be on Offeror's letterhead or form. Response to an RFP shall address all aspects of the request and must include a signature of Offeror. All offers must be submitted in a sealed envelope plainly marked using the RFP number, date and time. Offeror shall expressly address issues indicated by the evaluative criteria.

3.2 OPENING DATE/TIME:

Proposals and amendments thereto, if received by Owner after the date and time specified for scheduled opening will not be considered. It will be the responsibility of Offeror to see that his proposal is in this office by the specified time and date. Date of postmark will not be considered. Phone or telegraphic proposals (including FAX and electronic mail) will not be accepted.

3.3 CLARIFICATION OF TERMS:

If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror shall contact the buyer whose name appears on the face of the solicitation. Any revisions to the solicitation will be made only by addendum issued by Owner.

3.4 ETHICS IN PUBLIC CONTRACTING:

By submitting their proposals, all Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

3.5 ANTI-DISCRIMINATION;

By submitting their proposals, all Offerors certify to Owner that they shall conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

1 In every contract over \$10,000, the provisions of a. and b. below apply:

a. During the performance of this contract, Contractor agrees as follows:

Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Contractor, in all solicitations for advertisements for employees placed in behalf of Contractor, shall state that such Contractor is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

b. Contractor shall include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

3.6 IMMIGRATION REFORM AND CONTROL ACT OF 1986:

By signing this proposal, Offeror certifies that it does not and shall not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

3.7 INDEMNITY AGREEMENT:

The following shall be deemed included as a condition of any Agreement awarded as a consequence of this proposal:

Contractor and all subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify Owner against and save Owner harmless from all claims, demands, and judgments made or recovered against Owner because of bodily injuries, including death at any time resulting there from, and/or because of damage to property, from any cause whatsoever, arising out of, incidental to, or in connection with the performance of this agreement, whether or not due to any act of his or their employees, servants or agents and whether or not due to any act of omission or commission, including negligence but excluding sole negligence, of Owner, his employees, servants, or agents. Compliance by

Contractor with the insurance provisions hereof shall not relieve Contractor from liability under this provision.

Should Contractors or subcontractors use any of Owner's equipment, tools, employees, or facilities, such will be gratuitous and Contractor shall release Owner from and indemnify and save harmless Owner from and against any claims for personal injuries, including death, arising out of the use of any such equipment, tools, employees, or facilities, whether or not based upon the condition thereof or any alleged negligence of Owner in permitting the use thereof.

In no event shall Contractor's duties to defend, save harmless and indemnify Owner hereunder be enforceable after the expiration of five years from the date of completion of the services included in the Contract; provided, however, should any claim as is described in the immediately preceding paragraph relate to services performed by Contractor after the date of substantial completion, then from the date of the performance of any such services, whichever is later.

3.8 FAITH BASED DISCRIMINATION:

By submitting their proposals, all Offerors certify to Owner that they shall conform to the provisions of §2.2-4343.1 of the Code of Virginia, et. seq. Offeror shall not (i) discriminate against a faith-based organization as defined in Code of Virginia section 2.2-4343.1(B) on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F of the Code, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements. Further, Owner will not discriminate against faith-based organizations.

4.0 INFORMATION FOR OFFERORS RESPONDING TO REQUEST FOR PROPOSAL:

1. Award will be made to the most responsible and responsive Offeror or Offerors in accordance with the procedures set out in section **7.0** below.
2. Acceptance of a proposal by Owner is not an order to proceed.
3. All proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
4. Verify your proposals before submission as they cannot be withdrawn or corrected after being opened.
5. If you do not offer, return the cover sheet and state reason. Otherwise your name may be removed from our mailing list.

5.0 PROPOSAL CONTENTS:

Proposals shall include, but not be limited to, details of Offeror's Engineering team(s), including resumes of the key staff individuals to be assigned to the project and their background as well as

sub-consultants and their background. Additionally, proposals shall include the following information:

1. Previous experience with municipal engineering services contracts providing similar types of work to that described in section 2.0 above. Include the scope of work, the client, a contact person with the client, a phone number at which the contact can be reached, the status of the project(s) involved, and the year(s) the work was performed.
2. Specifically for the purposes of the evaluation criteria section **6.0** below, include detailed descriptions of the following types of projects that have been completed by the firm within the past 24 months:
 - a. A municipal athletic fields project having a construction contract cost in excess of \$500,000. It is preferable that this project involved work within, or adjacent to, developed neighborhoods, existing paved streets, and areas of numerous existing utilities, as this is the norm for this type of work in York County.
 - b. A stormwater study and construction project involving a drainage area of more than 50 acres (This project site is approximately 187 acres.), to include considerations for, and the design of, regional BMP(s).
 - c. A project involving the creation of wetland areas, as mitigation measures, acceptable to the USACOE and/or Virginia DEQ. This project should demonstrate the firm's ability to work with the regulatory agencies, expertise in environmental studies and design, as well as overall knowledge of environmental issues.
 - d. A project involving the design of new, and/or rehabilitation or upgrading of existing, sanitary sewer facilities and associated collection systems and pumping facilities, as well as public water systems.
 - e. A project involving Low Impact Development (LID) applications.
 - f. A project requiring a traffic study, coordinated with applicable state departments of transportation.
3. Description of the firm's capabilities and resources that can be expected to be available for use during the execution of services.
4. Statements concerning the availability of staff to perform all services required.
5. Appropriate reports, brochures, photographs or printed materials may be submitted at your option.
6. A written statement attesting that the firm maintains an errors and omissions liability insurance policy with a minimum limit of \$500,000.
7. Description of the organizational structure that will be employed to be responsive to the needs of Owner.

6.0 EVALUATION CRITERIA:

Evaluation of proposals will be under the complete jurisdiction and discretion of the County. It is the intent of this Request for Proposal that all engineering services provided hereunder shall be complete in all respects without need for engaging separate technical experts for professional services. The following evaluative criteria will be used in the review of proposals submitted as a result of this solicitation, and in addition to requirements found in the County's Purchasing Policy:

1. Overall capability of the firm to perform studies and to design and complete construction documents in a timely manner. This will be evaluated by examining the qualifications and prior experience of the firm based upon the documentation submitted.
2. Performance record achieved on similar projects recently completed by the firm. Include Owner's name, address and telephone number for each project. Owner will conduct telephone interviews to evaluate performances as viewed by references. Performance record to include:
 - a. Original schedule and scope of project.
 - b. Achieved schedule and scope of project.
 - c. Number and brief description of change orders issued during the project. This shall include change orders for both engineering services and the subsequent construction work where applicable.
 - d. Average turn around time for Requests for Information and Shop Drawing/ Submittal approvals.
3. Ability of the firm to perform required studies and designs with in-house resources. This will be evaluated by examining the qualifications and extent and depth of experience of the firm's staff to be assigned to the project as detailed in the staff resumes provided.
4. Proximity of firm's office, or branch office, to Yorktown, Virginia.
5. The firm's knowledge and use of Low Impact Development applications.

7.0 AWARD OF CONTRACT:

Two or more Offerors deemed to be fully qualified and best suited among those submitting proposals will be identified on the basis of the evaluation factors stated in the Request for Proposal.

Repetitive informal interviews shall be permissible wherein Offerors are encouraged to elaborate on their qualifications, performance data, staff expertise pertinent to the proposed services, as well as alternate concepts.

At the conclusion of discussions as outlined above, on the basis of evaluation factors published in this RFP and all information developed in the selection process to this point, the Evaluation Committee shall select, in the order of preference, two or more Offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations will then be conducted beginning with the highest ranked Offeror. If a contract, which is satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, an award will be made to that Offeror. Otherwise, negotiations with that Offeror will be formally terminated and negotiations conducted with the next highest ranked Offeror, and so on until a contract can be negotiated at a fair and reasonable price. It is Owner's intent to continue negotiations in this manner until a contract for services is awarded.

Should the Evaluation Committee determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable than the others under consideration, an agreement may be negotiated and awarded to that Offeror. At any time during the negotiations, the Purchasing Office may terminate all negotiations and re-advertise the requirement.

8.0 CONTRACT:

Contractor shall execute an Agreement consistent with the attached sample. Separate notices to proceed will be executed as to each individual project phase detailing the scope of services for that phase. General provisions set out in the Agreement, including the base schedule, shall apply to each phase. Offerors should indicate in their proposal which clauses, if any, in the sample Agreement they would seek to modify if they are selected.

**SAMPLE
ENGINEERING SERVICES AGREEMENT**

Agreement No. _____

THIS AGREEMENT made this ____ day of _____, 2005, by and between the County of York, Virginia, hereinafter referred to as "Owner", which term shall be construed to include any officer, representative or agent having authority to represent or act for it in relation to any part of the subject of this Agreement and _____, with offices located at _____, hereinafter referred to as "Engineer".

W I T N E S S E T H:

WHEREAS, Owner intends to _____,
and;

WHEREAS, an Engineer is desired for professional engineering services for Engineering Design Services: Harwood Mills Athletic Field Complex in accordance with Request For Proposal (RFP) No. _____ dated _____ (hereby incorporated into this agreement), all as hereinafter stipulated;

NOW, THEREFORE, Owner and Engineer in consideration of the mutual covenants and agreements herein contained agree as follows:

ARTICLE I. COMPENSATION

- A. Engineer shall provide the aforementioned professional services as an independent contractor and professional consultant and in accordance with the terms and conditions of this Agreement for one or more projects identified herein or identified from time to time in addenda to the agreement. Engineer shall assign _____ as the project manager for the performance of this contract. The project manager will be responsible for providing the services set forth in this Agreement. Owner has the right to approve or disapprove any proposed change from the above named individual and shall be provided with the resume of any proposed substitute and shall be given the opportunity to interview that person prior to a decision to approve or disapprove.
- B. Owner will compensate Engineer in accordance with the terms and conditions of this Agreement as follows:
1. For Engineer's basic services, including customary civil and/or environmental engineering services incidental thereto, a total lump sum fee shall be computed for the project based upon those rates set out in Exhibit A.

2. For Engineer's additional services, if any be authorized in advance by Owner as herein provided, a fee as computed by terms set forth in Exhibit A shall be paid by Owner.
3. For Consultant/Engineer's "reimbursable expenses", as that term is defined in Article V hereof, an allowance not to exceed the amount established in each notice to proceed to this agreement.
4. The times and further conditions of payment shall be as described in Articles II and VI hereof.

ARTICLE II. ENGINEER'S SERVICES

A. Basic Services

Engineer's basic services consist of one or more of the five phases described below and shall include customary civil and/or environmental engineering services and such other services as may be necessary to design and construct the Project for the intended purpose within funding limits. Notices to proceed for each phase shall contain a schedule setting forth appropriate deadlines on specific calendar dates. Time is of the essence in the performance of Engineer's duties under this Agreement and failure of Engineer to perform within the agreed upon time frames for each phase shall be considered a breach of this Agreement.

1. Preliminary Evaluation Phase

- b. Engineer shall, upon receipt of Owner's written notice to proceed, consult with Owner to ascertain the requirements for the Project and review available data.
- c. Engineer shall perform, and coordinate with Owner and the Virginia Department of Transportation (VDOT), a traffic study of the project area, and adjacent/surrounding areas, that will impact the flow of traffic to and from the project site.
- d. Engineer shall perform a boundary survey of the project area, and also verify any topographic survey information provided by Owner.
- e. Engineer shall provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other.
- f. Engineer shall review with Owner alternative approaches to the Project, including a general economic analysis of each alternative.
- g. Engineer shall evaluate those environmental conditions in the immediate vicinity of the project site that may influence the design of the Project, which shall include performance of a Natural Resources Inventory, and shall consult with appropriate

regulatory agencies as needed to address any additional environmental concerns. Engineer shall provide all necessary information to complete environmental permit applications, as necessary for completion of the project.

- h. Engineer shall prepare a report containing results of a natural resources Inventory, the traffic study, storm water management and drainage studies, and considerations for regional BMP design and construction. The report shall also include schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to Owner. The report shall set forth Engineer's findings and recommendations with opinions of probable cost for the Project, including construction cost, contingencies, allowance for charges of all professionals and consultants.
- i. Engineer shall attend at least one (1) regular meeting with the York County Board of Supervisors and present the results of the preliminary evaluation phase and proposed conceptual layout(s) of the athletic field complex.
- j. The preliminary evaluation phase shall be completed within the timeframe specified in the notice to proceed for this phase of the agreement.
- k. Upon approval of the Engineer's report for the preliminary evaluation phase, Owner will issue a written notice to proceed with the design development phase.

2. Design Development Phase

- a. Upon receipt of Owner's written notice to proceed, Engineer shall prepare from the approved report, five sets of the preliminary design documents to include final design criteria, preliminary drawings and outline specifications necessary to fix and describe the size and character of the Project. Engineer shall obtain any approvals required of any agencies as necessary, prior to submission of the preliminary design document to Owner for approval.
- b. Engineer shall submit to Owner a revised statement of probable construction cost.
- c. The design development phase shall be completed within the timeframe specified in the notice to proceed for this phase of the agreement.
- d. Upon approval of the design development documents, Owner will issue a written notice to proceed with the construction documents phase.

3. Construction Documents Phase

- a. Upon receipt of Owner's written notice to proceed, Engineer shall prepare for submission to and approval by Owner, five sets of working drawings and specifications along with detailed cost estimates. Such documents shall set forth in detail the requirements of the entire project, including the necessary bidding information prepared in such a way to allow Owner, if it so desires, to advertise for the award of one or more contracts for the construction and completion of the project, or any phase thereof. The plans and specifications shall follow York County standard formats. Engineer shall supply Owner with copies of all design calculations.
- b. Engineer shall advise Owner of any adjustments to previous statements of probable construction cost indicated by changes in requirements or general market conditions.
- c. Engineer shall file, within 15 calendar days following approval of the working drawings by Owner, four complete sets of proposed final plans and specifications with each regulatory agency (USACOE, VDH, DEQ, VDOT, etc.) that must grant a permit or approval for the project, for appropriate review and approval prior to the advertisement of bids for the construction of the project.
- d. Following approval, Engineer shall prepare 20 additional sets for bidding purposes. Should additional sets (above 20) be requested by Owner, Engineer will be reimbursed pursuant to Article V of this agreement.
- e. The construction documents phase shall be completed within the timeframe specified in the notice to proceed for this phase of the agreement.
- f. Upon approval of the construction documents phase, Owner will issue a written notice to proceed with the bidding phase, if applicable and desired.

4. Bidding Phase

- a. Following approval of the final construction documents, and upon receipt of Owner's written notice to proceed, Engineer shall assist in obtaining bids for the Project. Engineer shall attend the pre-bid conference and issue addenda as appropriate to interpret, clarify or expand the Bid Documents.
- b. Advise Owner regarding the acceptability of Contractor, subcontractor, suppliers and other persons and organizations deemed to have submitted the lowest bid for the project.
- c. Upon bid approval and subsequent award of the construction contract, Owner will issue a written notice to proceed with the construction contract administration phase, if applicable and desired.

5. Construction Contract Administration Phase

- a. The construction contract administration phase shall commence with the award of the construction contract and upon Engineer's receipt of Owner's written notice to proceed. It will terminate when Owner makes final payment to Engineer.
- b. Engineer shall make twice monthly visits to the site, at a time determined by Owner, throughout construction to observe and report on the progress and quality of the various aspects of Contractor's work. In addition, Engineer shall be available to attend
- c. During such visits and on the basis of such observations, Engineer shall recommend to Owner to accept or reject work completed or in progress.
- d. Engineer shall advise Owner relative to necessary interpretations and clarifications of the Contract Documents.
- e. Engineer shall review equipment and materials submittals for acceptability and evaluate and determine the acceptability of substitute materials and equipment as proposed by Contractor.
- f. Engineer shall act as initial interpreter of the requirements of the Contract Documents, and provide recommendations to Owner.
- g. Engineer shall attend and assist Owner in the monthly project construction progress meetings and discussions with Contractor concerning correction of deficiencies, and make recommendations as to replacement or correction of defective work.
- h. Engineer shall conduct a final inspection and assist Owner in the final acceptance of the project.

B. Project Representation Beyond Basic Services

In the event that circumstances should develop whereby more extensive representation at the project site is desired by Owner, the conditions under which such representation shall be furnished and the project representatives selected, employed and directed shall be governed by a written supplemental agreement.

C. Additional Services

The following services are not covered under Engineer's basic services for the project:

1. Making further planning surveys not covered under the Basic Services, which might be required by Owner.
2. Revising previously approved drawings, specifications or other documents to accomplish changes not initiated by Engineer which would require a substantial change in basic design but not including revisions made pursuant to the requirements of Article IV, paragraph D.
3. Preparing change orders and supporting data when changes in approved plans and specifications are required by Owner resulting in an increase or decrease in the scope of the work. If changes are required to be made because of error, oversight, clarification or discrepancy in the work of Engineer, Owner will not be liable to compensate Engineer for additional services in such connection.
4. Preparing documents for change orders, or supplemental work, initiated at Owner's request after commencement of construction phase.
5. Providing consultation concerning replacement of any Project work damaged by fire or other cause during construction and furnishing professional services of the type set forth under this Article as may be required in connection with the replacement of such work.
6. Providing professional services made necessary by the default of any contractor in the performance of the construction contract.

If Owner, in advance of the performance of any of the above additional services, authorizes any of these additional services, they shall be paid for by Owner as hereinbefore provided. Before any services rendered by Engineer shall qualify as additional services for the project, Engineer shall notify Owner in writing of his intention to treat certain services, if performed, as additional services and his reasons therefore. If notice is not given, no claim for additional services will be honored. Notice by Engineer shall not be construed as proving the validity of the claim.

D. Other Services

The fee for Engineer's services not directly related to the project shall be computed on the basis of Exhibit A. In order to qualify for compensation, all such services shall be approved by Owner in advance.

ARTICLE III. OWNER'S RESPONSIBILITIES

- A. Owner will provide full information regarding its requirements for the Project.
- B. Owner will designate, when necessary, representatives authorized to act in its behalf.

- C. Owner will examine documents submitted by Engineer and render decisions pertaining thereto promptly to avoid unreasonable delay in the orderly progress of Engineer's work.
- D. Owner will arrange for access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform its services.
- E. Owner will furnish its own legal, accounting and insurance counseling services, as may be required for the Project, but this shall not relieve Engineer of the responsibility to make certain that Contractor has obtained the proper insurance coverage as required under the contract documents.
- F. Engineer will be entitled to reasonably rely on the accuracy of the services, information, surveys, reports and other materials, which Owner furnishes at its expense.
- G. If Owner observes or otherwise becomes aware of any fault or defect in any Project or nonconformance with the Agreement documents, it will provide prompt written notice thereof to Engineer.

ARTICLE IV. PROJECT CONSTRUCTION COST

- A. For purposes of this Article, project construction cost as to any project shall be determined as follows with precedence in the order listed:
 - 1. For completed construction, the total cost of all work designed or specified by Engineer, but it shall not include any payments made to Engineer or consultants, land costs, or other costs which are the responsibility of Owner, as provided in Article III.
 - 2. For work not constructed, the lowest responsible bid received and accepted for any or all such work; or
 - 3. For work for which bids have not been let, the latest detailed cost estimate, or Engineer's latest statement of probable construction costs submitted to Owner.
- B. If labor or material is furnished by Owner, the Project construction cost shall include the labor and materials at then current market rates and prices.
- C. A fixed limit of budgeted construction cost shall be established as an addendum to this Project contract. Engineer, with Owner approval, shall determine what materials, equipment, component systems and types of construction are to be included in the contract documents, and shall make adjustments in the scope of the Project to bring it within the fixed limit of budgeted construction costs. Engineer may include in the contract documents alternate bids to adjust the construction cost to the fixed limit of budgeted construction costs.

- D. If the lowest responsible bid, latest detailed estimate, or Engineer's or cost consultant's latest probable construction cost exceeds the fixed limit of budgeted construction cost, Owner may either (i) give written approval of an increase in such fixed limit, or (ii) authorize re-bidding of the Project within a reasonable time, or (iii) cooperate in revising the Project scope and quality as required to reduce the probable construction cost.

In the case of (ii), Owner will pay printing and/or reproduction costs for additional sets of plans and for advertising costs. Engineer shall furnish any required services for a fee negotiated between Owner and Engineer.

In the case of (iii), Owner will negotiate with Engineer to agree upon the additional fee to modify the drawings and specifications as necessary to bring the construction cost within the original fixed limit, or within any new fixed limit subsequently authorized by Owner and, if applicable, shall assist in re-bidding the Project. Costs for personnel, however, shall not exceed the direct personnel expenses set forth in Exhibit A. Engineer shall make a good faith effort to secure a responsible bid within the fixed limit of construction cost agreed to by Owner.

- E. If conditions or circumstances which could not be reasonably foreseen at the time this Agreement was entered into develop between the date of the Agreement and the date any revisions are necessary, through no fault of Engineer, to the extent that, in the opinion of Owner, it would be inequitable to force Engineer to modify the drawings and specifications without additional charge, Owner may compensate Engineer for his reasonable cost of modification on the basis of his direct personnel expense and reimbursable expenses as defined in Article V hereof. Any additional compensation authorized and the specific reason therefore shall be set forth in a resolution of Owner. The burden of proving that changed conditions could not have been reasonably foreseen shall be on Engineer.
- F. Since Engineer has no control over the cost of labor or materials, or competitive bidding, it is understood Engineer does not guarantee the accuracy of any statement of probable construction costs or any detailed cost estimates.

ARTICLE V. DIRECT PERSONNEL EXPENSE AND REIMBURSABLE EXPENSES

- A. Direct personnel expense includes the salaries of employees engaged on the Project by Engineer, including project officers, project managers, engineers, designers, architects, draftsmen, technicians, specification writers and typists, in consultation, research and design, in producing drawings, specifications and other documents pertaining to the Project, and in services during construction at the site. Direct personnel expense includes mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions and similar benefits (see Exhibit A).
- B. Reimbursable expenses are in addition to the fees for basic and additional services and include actual expenditures made by Engineer or Engineer's employees and consultants for the

incidental expenses set forth below in the interest of the Project. An allowance for reimbursable expenses shall be established for the project under this Agreement.

1. When authorized in advance by Owner, expense of transportation and living of principals and employees when traveling in connection with the project outside of York County, essential long distance telephone calls, fees paid for the securing of the approval of the authorities having jurisdiction over the project, and reproduction of drawings and specifications, excluding copies for Engineer's office use and the required number of sets at each phase of the work for Owner's review, approval and records, and also excluding the required number of approved final sets needed for bidding purposes, will be reimbursable expenses.
2. When authorized in advance by Owner, the expense of Project representative(s) overtime work requiring higher than regular rates will be a reimbursable expense.
3. When authorized in advance by Owner, the cost of producing models of the Project for use by Owner will be a reimbursable expense.
4. When authorized in advance by Owner, the employment of special consultants for other than customary civil, environmental, structural, mechanical, or electrical engineering services, and the basic services hereinabove defined, will be reimbursable expenses.
5. The services set forth in Article III, paragraph C, of this Agreement will be treated as reimbursable expenses if Engineer is directed to obtain the same on behalf of Owner, and Owner does not provide such services directly.
6. If after the execution of this Agreement, Owner authorizes in writing reimbursable expenses in excess of the allowance set forth in this Article and paragraph B, 3 of Article I, then said allowance will be deemed increased to an amount sufficient to cover the additional reimbursable expenses authorized.
7. Schedule of reproduction/duplication costs is set forth in Exhibit A.

ARTICLE VI. PAYMENTS TO ENGINEER

- A. Engineer may submit requests for payment at 30-day intervals based on percent of work completed. Payment requests will be considered only after receiving progress reports on the work and satisfactory evidence that the work reported has been acceptably accomplished. The payment of Engineer's fee in monthly installments is not to be construed as creating separate contracts, and Engineer's obligation under this Agreement is an entire one. The lump sum fee for basic services for the project along with a breakdown, by both percentage and dollars, for each phase of the work is as shown below.

1.	Preliminary Evaluation Phase	<u> %</u>	<u> \$</u>
2.	Design Development Phase	<u> %</u>	<u> \$</u>
3.	Construction Documents Phase	<u> %</u>	<u> \$</u>
4.	Bidding Phase	<u> %</u>	<u> \$</u>
5.	Construction Contract Administration Phase (periodic payments based on percent of construction completed)	<u> %</u>	<u> \$</u>
		<u>100 %</u>	

- B. Payments for additional services and reimbursable expenses will be made monthly upon presentation of Engineer's detailed invoice in triplicate.
- C. No deduction will be made from Engineer's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.

ARTICLE VII. ENGINEER'S ACCOUNTING RECORDS

Records of Engineer's direct personnel, consultant and reimbursable expenses pertaining to the project, and records of accounts between Owner and contractors shall be kept on a generally recognized accounting basis and shall be available to Owner or its authorized representatives upon reasonable notice.

ARTICLE VIII. TERMINATION OF AGREEMENT

- A. In connection with the work outlined in this contract, it is agreed and fully understood by Engineer that Owner may at any time cancel, indefinitely suspend further work hereunder, or terminate this Agreement upon ten days written notice to Engineer with the understanding that immediately upon receipt of said notice all work and labor being performed under this Agreement shall cease. All plans, field surveys, maps, cross-sections and other data and work related to the Project shall be delivered to Owner upon cancellation or termination of this Agreement. If the work on the Project is suspended by Owner, Engineer shall be compensated to the time of such suspension in accordance with the provisions of paragraph B of this Article and if the resumption of work is not authorized within two years from the date of suspension, the Project Agreement shall be automatically terminated and neither Engineer nor Owner will have any further obligations thereunder.
- B. If this Agreement is terminated for any reason not the fault of Engineer, Engineer will be paid in accordance with the terms of this Agreement for all work accomplished prior to the receipt of said notice on the basis of either (i) the percentage of the basic fee due at the completion of the phase during which work is stopped or (ii) Engineer's rate for additional services, whichever is less. Such payment will be made to Engineer as a final payment in full settlement for the services hereunder or under any supplemental agreement hereto. In the event of a termination

for breach or default by Engineer, Owner will have access to all remedies available to it in equity or at law.

- C. This Agreement may be terminated by Engineer upon ten days written notice in the event of substantial failure by Owner to perform in accordance with the terms hereof through no fault of Engineer. In the event of such termination by Engineer, the provisions of paragraph B immediately hereinabove shall apply mutatis mutandis, except that Engineer shall be entitled to no compensation other than that specified in paragraph B by way of a claim for damages arising out of this Agreement or otherwise.
- D. Upon 30 days written notice to Engineer, this agreement may be canceled by Owner at any time when in the judgment of Owner the product furnished, or service rendered, by Engineer is not satisfactory. Such termination shall not be deemed a waiver of any rights of Owner to damages for breach of contract.

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- A. All plans or drawings shall be prepared and submitted by Engineer to Owner on 24-inch by 36-inch sheets. Working drawing plans shall be prepared in AutoCAD version 14 or latest release.
- B. Upon completion of the Final Design Phase of any Project, Engineer shall, within 30 calendar days, deliver to Owner the AutoCAD files, together with one set of reproducible mylars and a Microsoft Word for Windows version 7, or latest release, electronic copy of the specifications.
- C. All documents including, but not limited to, AutoCAD files, tracings, drawings, estimates, specifications, investigations and studies completed or partially completed, shall be the property of Owner. Engineer, its subcontractors, agents and employees shall be liable to Owner for any loss or damage to any such documents while they are in the possession of or while being worked upon by Engineer or anyone connected with Engineer. All documents so lost or damaged shall be replaced or restored by Engineer at Engineer's sole expense.
- D. All documents including drawings and specifications are prepared by Engineer in respect to the Project. They are not represented to be suitable for use on other projects. Owner agrees that, should it decide to reuse any such documents on any other project, Engineer shall not be liable to Owner for such reuse unless Engineer under separate agreement with Owner agrees to verify or adapt the documents to such other project.

ARTICLE X. MISCELLANEOUS PROVISIONS

- A. No elected official or employee of Owner who exercises any responsibilities in the review, approval or carrying out of this Agreement will participate in any decision relating to this Agreement which affects his or her direct or indirect personal or financial interests.

- B. No reports, information, and/or data given to or prepared or assembled by Engineer under this Agreement shall be made available to any individual or organization by Engineer without the prior written approval of Owner.
- C. This Agreement represents the entire and integrated agreement between Owner and Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by an instrument signed by both Owner and Engineer.
- D. Engineer shall maintain insurance to protect Engineer from claims under worker's compensation acts; claims due to personal injury or death of any employee or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions or negligent acts for which Engineer is legally liable. The amounts and extent of such insurance are indicated below:

- 1. Worker's Compensation and Employer's Liability

- \$100,000 per occurrence; \$100,000/\$100,000 Accident and/or Disease.

- 2. Comprehensive Automobile Liability

- \$1,000,000 per occurrence bodily injury and \$100,000 property damage.

- 3. Comprehensive General Liability

- \$1,000,000 per occurrence bodily injury and \$100,000 property damage.

- 4. Professional Liability Insurance

- Unless waived by the Board of Supervisors, the limit shall be a minimum of \$1,000,000 or the Agreement amount, whichever is greater.

Owner, it's officers and agents shall be named as an additional insured on the applicable policies and such insurance shall be with a company deemed satisfactory to Owner. Prior to the issuance of a Notice to Proceed, Engineer shall furnish to Owner certificate(s) of insurance evidencing the above categories and stating that the insurance will not be canceled without at least thirty days prior written notice, along with a proper endorsement to the applicable policies listing Owner as an additional insured.

- E. Engineer shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and shall indemnify Owner against and save Owner harmless from all claims, demands and judgments made or recovered against Owner because of bodily injuries, including death at any time resulting there from, and/or because of damage to property, from any cause whatsoever, arising out of, incidental to, or in connection with the performance of the work by Engineer, including acts of Engineer's employees, servants or agents, whether or not such claims

are due to any act of omission or commission, including negligence but excluding sole negligence, of Owner, its employees, servants, or agents. Compliance by Engineer with the insurance provisions hereof shall not relieve Engineer from liability under this provision.

Should Engineer or Engineer's employees, servants or agents use any of Owner's equipment, tools, employees, or facilities, such will be gratuitous and Engineer shall release Owner from and indemnify and save harmless Owner from and against any claims for personal injuries, including death, arising out of the use of any such equipment, tools, employees, or facilities, whether or not based upon the condition thereof or any alleged negligence of Owner in permitting the use thereof.

In no event shall Engineer's duties to defend, save harmless and indemnify Owner hereunder be enforceable after the expiration of five years from the date of completion of the services included in the Contract; provided, however, should any claim as is described in the immediately preceding paragraph relate to services performed by Engineer after the date of substantial completion, then from the date of the performance of any such services, whichever is later.

F. During the performance of this contract, Engineer agrees as follows:

1. Engineer will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Engineer, in all solicitations or advertisements for employees, shall state that Engineer is an equal opportunity employer and will not discriminate against faith-based organizations.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this contract. The Consultant/ Engineer shall include the provisions of this paragraph F in every subcontract or purchase order over Ten Thousand Dollars (\$10,000.00) so that the provisions shall be binding upon each subcontractor or vendor.

ARTICLE XI. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approvals given by Owner will not constitute nor be deemed a release of the responsibility and liability of Engineer, or Engineer's employees, subcontractors, agents and consultants for the accuracy and competency of designs, working drawings, specifications or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by Owner for any defect in the designs, working drawings and specifications or other documents prepared by Engineer, or Engineer's

employees, subcontractors, agents and consultants. Engineer shall be liable to Owner for all costs incurred by Owner by virtue of any error or omission in the construction documents with respect to any project.

ARTICLE XII. ASSIGNMENT

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this contract. Neither party shall assign, sublet or transfer any interest in this Agreement without written authorization of the other.

ARTICLE XIII. COMPLIANCE WITH LAWS, ORDINANCES, ETC.

- A. Engineer, and Engineer's consultants, agents and employees and subcontractors, shall comply with all applicable federal and State laws, the ordinances of the County of York, and with all applicable rules and regulations promulgated by all local, State and national boards, bureaus and agencies. Engineer shall further obtain all permits and licenses required in the preparation of the work contracted for in this Agreement.
- B. Any provision of Title 2.2, Chapter 43, Code of Virginia (1950), Virginia Public Procurement Act, in effect as of the date of this Agreement, which is not expressly included in this Agreement is hereby incorporated by reference.

ARTICLE XIV. ENFORCEMENT AND NOTICES

- A. The parties agree that this Agreement shall be enforceable in the County of York, Virginia, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions hereof, exclusive venue for the enforcement of the same shall lie in the Circuit Court of York County, Virginia.
- B. All written notices given to Owner by Engineer shall be addressed to and filed with the County of York, Virginia, Department of Environmental and Development Services, P.O. Box 532, Yorktown, Virginia 23690-0532. All written notices from Owner to Engineer shall be addressed to Engineer as follows: _____.

ARTICLE XV. COMPONENT PARTS OF THIS AGREEMENT

- A. This Agreement consists of the following component parts, all of which are hereby made a part hereof as if herein set out in full:
 - 1. Request for Proposal (RFP) No. _____, dated _____, 2005, and all attachments thereto.
 - 2. Engineer's Proposal dated _____, 2005

3. Engineering Services Agreement (this document)
4. Notice of Award
5. Notices to Proceed
6. Change Orders (if any)
7. Other Documents as may be required by law or appended hereto

IN WITNESS WHEREOF, Engineer has executed this Agreement pursuant to proper authority and in the manner appropriate to him and Owner has executed this Agreement pursuant to its Motion enacted on _____, 2005.

COUNTY OF YORK, VIRGINIA

By: _____
County Administrator

ENGINEER

By: _____

Type/Print Name: _____

TITLE: _____

ATTEST:

Secretary

Approved as to Form:

County Attorney

STANDARD BILLING RATE SCHEDULE

- ### Other Services

- The hourly rates shall be in effect through calendar year_____. Thereafter, rates may increase up to _____% per calendar year.